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PROPOSED ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re:	§	Chapter 11
	§	
FLEXIBLE FUNDING LTD. LIABILITY CO., <i>et</i>	§	Case No. 21-42215-11-mxm
<i>al.</i> ¹	§	
	§	
Debtors.	§	(Jointly Administered)

**DECLARATION OF AMELIA DIPPREY IN SUPPORT OF DEBTORS' EMERGENCY MOTION
FOR ENTRY OF AN ORDER (I) AUTHORIZING THE DEBTORS TO PAY PREPETITION
EMPLOYEE COMPENSATION AND OTHER EMPLOYEE BENEFIT EXPENSES
AND (II) GRANTING NUNC PRO TUNC RELIEF**

I, Amelia Dipprey, state and declare as follows:

1. I am over 18 years of age and if called upon I would competently testify to the matters set forth herein.
2. I am the Chief Revenue Officer of Flexible Funding Ltd. Liability Co. ("Flexible") one of the two Debtors in these jointly administered chapter 11 cases. As CRO of Flexible, I am familiar with the business, day-to-day operations, and financial affairs of both Flexible and Instapay Flexible, Inc. ("Instapay" and collectively with Flexible, the "Debtors"). I perform my duties out of my office located at 5600 Clearfork Main St., Suite 420, Fort Worth, TX 76109.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: Flexible Funding Ltd. Liability Co. (4495) and Instapay Flexible, Inc. (7648).

3. Based upon my personal knowledge of the Debtors, their business operations, history, industry, and books and records, and based upon information contained in the Debtors' books and records, I am qualified to give this declaration on behalf of the Debtor. Some of the information presented below is based upon my review of data regularly compiled by the Debtor in the ordinary course of its business.

THE DEBTORS' WORKFORCE

4. The Debtors have thirty-three (33) employees located in Texas, Georgia, and California including managers, underwriters, accountants, operations and collections specialists, and salespeople (the "Employees"). Of those Employees, twenty-six (26) are full-time and seven (7) are part-time.

5. Most of the Employees (*i.e.* 26 of them) are salaried Employees with salaries ranging from \$38,700 to \$336,000 per year. Additionally, three of the Employees also receive commission-based pay on top of a base salary. The Debtors also have seven (7) Employees paid on an hourly basis ranging from \$21.00 per hour to \$31.00 per hour.

6. The Debtors presently employ sixteen (16) independent contractors based in Russia and the Philippines who perform "back office" work including invoice compilation, verification, billing, collections, and IT Support. Most of these independent contractors (9 of them) are employed pursuant to a contract with Cloudstaff HK for outsourcing services. The Debtors take on additional independent contractors as needed based on the monthly demand.

THE DEBTORS' PAYROLL PROCESS

7. The Debtors process payroll on Fridays on a weekly basis. Payroll paid on Fridays covers the period of the prior Sunday-Saturday (*i.e.* payroll distributed on August 20th covers the period of Sunday, August 8th through Saturday August 14th).

8. This commission-based pay varies from month to month depending on the performance of the Employees. The commission-based pay is paid on the 15th of each month through ADP in the same manner as payroll and reimbursements. As of the filing of this Motion,

none of the Employees are entitled to prepetition commission-based pay and the Debtors timely paid commissions in full on September 15, 2021.

9. Henceforth, the Debtors will continue to pay Employees every week on Fridays.

10. The Debtors process payroll using ADP, which draws the funds for payroll from the Debtors' account at Umpqua Bank and direct deposits the money into the Employees' accounts.

11. The independent contractors are paid differently and separately from the other Employees. The Cloudstaff HK independent contractors are paid at the end of each month for the following month and the remaining contractors (the Russia-based contractors) are paid on the 15th of each month in arrears. Accordingly, the Debtors owe the Russia-based contractors for four (4) days of prepetition wages, September 16 through 19, 2021 in the total amount of \$2,400. The Cloudstaff HK independent contractors are owed \$19,255.58 for services to be rendered October 1 through 31, 2021 no later than September 24, 2021.

12. Henceforth, the Debtors will continue to pay the independent contractors on a monthly basis in advance.

THE PREPETITION WORKFORCE OBLIGATIONS

I. Payroll Obligations

13. The next payroll is due on Friday September 24, 2021 (the "September 24 Payroll") and covers the period from September 12 through September 18. All seven (7) of those days are for prepetition time. The next payroll will be due on October 1, 2021 (the "October 1 Payroll") and will include one (1) prepetition day, September 19, in combination with post-petition earnings. The Debtors' payroll is usually drawn from its bank accounts by ADP each Tuesday. However, prior to filing this Motion, the Debtor has informed ADP that the withdrawal must be delayed until an order granting this Motion is entered.

14. The next payroll is due on Friday September 24, 2021 (the "September 24 Payroll") and covers the period from September 12 through September 18. All seven (7) of those days are for prepetition time. The next payroll will be due on October 1, 2021 (the "October 1 Payroll") and

will include one (1) prepetition day, September 19, in combination with post-petition earnings. The Debtors' payroll is usually drawn from its bank accounts by ADP each Tuesday. However, prior to filing this Motion, the Debtor has informed ADP that the withdrawal must be delayed until an order granting this Motion is entered.

15. The September 24 Payroll includes approximately \$88,314.39 in net payments to Employees and approximately \$6,117.53 in withheld taxes and employer paid taxes. The Debtors are seeking permission to pay those amounts on September 24, 2021.

16. The October 1 Payroll includes approximately \$12,339.80 in net payments to Employees and approximately \$873.93 in withheld taxes and employer paid taxes. The Debtors are seeking permission to pay those amounts on October 1, 2021 with post-petition earnings.

17. The Debtors have a contract with ADP to run and perform payroll services. ADP draws the weekly payroll from the Debtors bank account at Umpqua Bank. For its services, ADP charges the Debtors approximately 1.9% of the total gross pay per payroll period.

18. The Debtors provide expense reimbursement for the sales and marketing team, including for general office expenses and fuel charges, meals, and entertainment for work related travel. However, reimbursements to other Employees and outside of these limited categories is also given on a pre-approved basis. To receive a reimbursement, the Employee must fill out an expense form and present their request for reimbursement to a supervisor for written approval. The reimbursement is then sent to accounting to be processed with the next payroll cycle. The average monthly cost for reimbursements is \$20,000. The Debtors owe some Employees for expenses incurred prepetition; however, the Debtors will not pay any reimbursements due that exceed \$5,000. The Debtors are requesting prepetition reimbursements to be paid as usual with September 24 Payroll at a \$5,000 cap.

19. Upon preparing for the hearing on the Motion, the Debtors discovered that the prepetition invoice to Cloudstaff HK had not been paid as originally thought. Accordingly, The

Cloudstaff HK independent contractors are owed \$19,255.58 for services to be rendered October 1 through 31, 2021 no later than September 24, 2021.

II. Employee Benefit Program Obligations

20. The Debtors provide certain Employees a comprehensive benefits package which includes health insurance, a 401(k) plan with matching contributions, paid holiday and paid time off ("PTO"), and a flexible spending account ("FSA").

21. The Debtors provide health insurance to all full-time United States based Employees through Aetna and Kaiser Permanente. The Debtors pay \$500 per individual and \$1,000 per family, per month under the health insurance plan. The Employees covered by the health insurance plan pay for any additional costs over the Debtors' contributions. As of the Petition Date, the Debtors did not owe any premiums to Aetna or Kaiser Permanente.

22. Likewise, the 401(k) program is only available to full-time United States based Employees and is administered by ADP. Eligible Employees make contributions based on a specific paycheck amount or percentage. The Debtors match the 401(k) contributions of their employees on a discretionary, dollar-for-dollar basis up to 1% of the Employee's compensation and on a discretionary, 50% of dollar basis up to 6% of the Employee's compensation. Such matching contributions are not fully vested for three (3) years. As of the Petition Date, the Debtors were not holding any employee contributed 401(k) contributions and the Debtors did not owe any matching based on Employee contributions. All administrative costs associated with the 401(k) plan are deducted from the assets contributed by the Employees.

23. The Debtors also provide paid Federal holidays to all Employees equal to ten (10) days. All California-based and part time Employees are permitted three (3) paid sick days per year. The sick days are given to Employees on January 1 of each year. All Employees are also permitted seventeen (17) vacation or paid time off days per year.

24. Lastly, the Debtors also offers its Employees a flexible spending account. The FSA is administered by ADP. The FSA allows Employees to set aside pre-tax dollars to cover incidental

medical costs and dependent child and elderly care. As of the Petition Date, the Debtors did not owe any FSA withholdings to ADP.

THE POST PETITION PAYMENT BY ADP

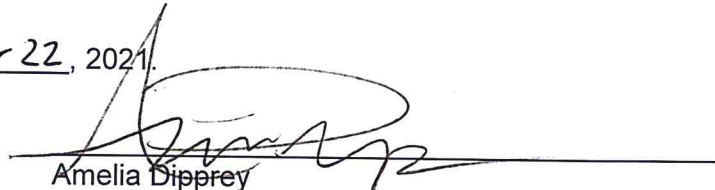
25. One of the Debtors' employees was inadvertently omitted from payroll on Friday, September 17, 2021. Even with a large reimbursement due to her as a result of her recent relocation, she is still well under the priority cap. However, ADP ran the corrected payroll and reimbursement after the Petition Date without informing or first seeking approval from the Debtors. Therefore, the Debtors unintentionally paid a prepetition debt.

26. This employee should have been paid her weekly wage of \$1,064.87 on September 17, 2021. Additionally, this employee recently relocated for Instapay and was due a reimbursement for the costs associated with moving in the total amount of \$7,039.67. Accordingly, she should have received total a payment of \$8,104.54 on September 17, 2021. Unfortunately, due to an accounting error, the reimbursement was treated as a deduction rather than a credit and the employee did not receive anything on pay day. Because ADP has already corrected the prior omission, the Debtors seek *nunc pro tunc* approval of this post-petition payment.

Pursuant to 28 U.S.C. § 1746(2) I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

[Execution Page to Follow]

Executed on September 22, 2021.



Amelia Dipprey
CRO of Flexible Funding Ltd. Liability Co.